

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SENATOR BILL DESTEPH,

Plaintiff,

v.

SENATOR MAMIE LOCKE, *et al.*,

Defendants.

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Case No. 3:20cv951

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Mamie Locke; Eileen Filler-Corn; Susan Clarke Schaar; Suzette Denslow; and Virginia Division of Capitol Police hereby remove the above-captioned action from the Circuit Court for the City of Richmond (Case No. 20006132-00) to the United States District Court for the Eastern District of Virginia. The Complaint and accompanying attachments are attached as **Exhibit 1**.

Earlier this month, Chairwoman Locke of the Senate of Virginia and Speaker Filler-Corn of the Virginia House of Delegates determined, in response to the COVID-19 pandemic and based on guidance from public health authorities, that the Pocahontas Building in Richmond, Virginia will be open to only credentialed legislative employees and current legislators during the upcoming session of the Virginia General Assembly. Chairwoman Locke and Speaker Filler-Corn made this determination to protect the health and safety of General Assembly members, staff, and the public. Plaintiff challenges the lawfulness of that decision under the First Amendment to the United States Constitution and Article I, Section 12 of the Virginia Constitution. Because the Complaint asserts claims based on federal law, this Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1367.

BASIS FOR FEDERAL QUESTION JURISDICTION

1. On December 8, 2020, plaintiff filed Case No. 20006132-00 in the Circuit Court for the City of Richmond.

2. In the Complaint, Plaintiff relies on the First Amendment to the United States Constitution to allege violations of the constitutional “right to assemble and address lawmakers” as well as the “right to freedom of speech.” Compl. ¶¶ 17, 23.

3. Plaintiff also specifically requests relief under federal law, based on the alleged “violation of the freedoms protected under the 1st Amendment.” Compl. ¶ 27.

4. Because Plaintiff has challenged Defendants’ actions as violating federal law, this case necessarily “aris[es] under the Constitution . . . of the United States” within the meaning of 28 U.S.C. § 1331. See *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (“It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights.”); *Lisenby v. Lear*, 674 F.3d 259, 262 (4th Cir. 2012) (“[R]emoval is appropriate if the face of the complaint raises a federal question.” (quotation marks and citation omitted)).

5. The fact that Plaintiff also invokes state law in the Complaint does not defeat federal jurisdiction. Where a complaint asserts violations of both state and federal law, federal courts have jurisdiction if the plaintiff “alleges one set of facts to support” both the “federal *and* state law claims.” *Lee v. Wells Fargo Home Mortg.*, No. 3:13-CV-00034, 2013 WL 5797375, at *4 (W.D. Va. Oct. 28, 2013); see also *Mendenhall v. City of Akron*, 374 Fed. Appx. 598, 599 (6th Cir. 2010) (affirming denial of motion to remand where complaint “sought declaratory and injunctive relief invalidating [an] ordinance . . . as violative of both the federal and state constitutions”).

6. Because Plaintiff's state-law claim challenges the same conduct and seeks the same relief as Plaintiff's federal claim, the claim is "so related" that it "form[s] part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Accordingly, this Court has supplemental jurisdiction over Plaintiff's state-law claim under 28 U.S.C. § 1367.

OTHER REQUIREMENTS FOR REMOVAL

7. Counsel for Defendants received a copy of the Complaint in this matter on December 8, 2020. This Notice of Removal is thus timely filed because it is being "filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b)(1).

8. The Richmond Division of the United States District Court for the Eastern District of Virginia encompasses the City of Richmond, where the Complaint was filed. This Court is therefore "the district and division within which such action is pending" pursuant to 28 U.S.C. § 1446(a).

9. As required by 28 U.S.C. § 1446(d), Defendants will "[p]romptly . . . give written notice" of the filing of this Notice of Removal to the Clerk of the Circuit Court for the City of Richmond and counsel for Plaintiff. A copy of the notice that will be provided is attached as **Exhibit 2**.

10. Because Defendants "did not answer before removal," Defendants will "answer or present other defenses or objections under these rules" within the time period listed in Federal Rule of Civil Procedure 81(c)(2).

* * *

As pleaded in the Complaint, Plaintiff has brought suit under federal law. Accordingly, this case arises under federal law and may be heard in a federal forum.

CONCLUSION

The case originally filed in the Circuit Court for the City of Richmond (Case No. 20006132-00) is hereby removed to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. §§ 1441 and 1446. Defendants respectfully request that the action proceed in this Court as an action properly removed to it.

Dated: December 11, 2020

Respectfully submitted,

**SENATOR MAMIE LOCKE; SPEAKER EILEEN
FILLER-CORN; SUSAN CLARKE SCHAAR;
SUZETTE DENSLOW; and VIRGINIA DIVISION OF
CAPITOL POLICE**

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2020, a true and accurate copy of the foregoing Notice of Removal was filed electronically with the Court's CM/ECF system. A copy of this Notice of Removal was also transmitted by both first-class mail and email to:

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